

REMARKS

The Examiner appears to be confused as to the claims pending in this application. The Examiner indicated on the Office Action Summary (March 1, 2004) that claims 1-52 are pending. To clarify, claims 1-13, 15-17, 19-42, 44-49, 51, and 52 are currently pending in this application. In the Amendment dated December 4, 2003, Applicant canceled claims 14, 18, 43 and 50, amended claims 1, 15, 16, 19, 42, 44, 49, and 51, and added a new claim 52. Further, the Examiner, in this Office Action (March 1, 2004), rejected claims that have already been canceled.

Applicant again notes with appreciation that the Examiner has indicated that claims 21-41 and 45-48 are allowed.

Reconsideration of the claims in view of the claim amendments and the following remarks is respectfully requested.

Rejection[s] under 35 U.S.C. § 102

Independent claim 1 was rejected under 35 U.S.C. §102 over Stafford. This rejection is respectfully traversed. Claim 1 cites,

1. An endotracheal intubation assistance device placed under the head and shoulders of a patient in a supine position, the device comprising:
 - a first chamber being inflatable to raise the shoulders of the patient relative to the head of the patient thereby facilitating insertion and proper placement of a laryngoscope blade into the mouth of the patient;
 - a second chamber coupled to the first chamber, the second chamber being inflatable to raise the head of the patient relative to the shoulders of the patient hereby facilitating visualization of the patient's glottis for insertion of an endotracheal tube; and

a pressure applicator coupled to one of said first and second chambers near a boundary of said first and second chambers and operable to apply pressure to a cricoid cartilage of said patient to prevent aspiration of gastric contents into the lungs of the patient and to provide better visualization of a larynx of said patient.

MPEP § 2131 states that,

"[t]o anticipate a claim, the reference must teach every element of the claim...."

Therefore with respect to claim 1, to sustain this rejection the Stafford patent must teach all of the above claimed elements of the claim. However, contrary to the examiner's position that all elements are disclosed in the Stafford reference, Stafford does not disclose "a pressure applicator coupled to one of said first and second chambers near a boundary of said first and second chambers," nor does Stafford disclose that the pressure applicator is "operable to apply pressure to a cricoid cartilage of said patient." Stafford is devoid of any discussion or suggestion of these limitations. Therefore, this rejection is not supported by the Stafford reference and should be withdrawn. Further, claims 2, 3, 7-9, and 13 that depend from claim 1 set forth additional limitations and are allowable over Stafford for the same reasons. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Independent claim 42 was also rejected under 35 U.S.C. §102 over Stafford. This rejection is respectfully traversed. Claim 42 cites,

42. An endotracheal intubation assistance device placed under the head and shoulders of a patient in a supine position, the device comprising:
first and second independently inflatable and deflatable chambers;
said first chamber being substantially inflated and said second chamber being substantially deflated to raise the shoulders of the patient relative to the head of the patient thereby facilitating insertion of a laryngoscope blade into the mouth of the patient;
said second chamber being substantially inflated and said first chamber being substantially deflated to raise the head of the patient relative to the shoulders of the patient thereby facilitating visualization of a glottis of the patient for insertion of an endotracheal tube; and
a pressure applicator coupled to one of said first and second chambers and operable to apply pressure to a cricoid cartilage of said patient.

Again, Stafford does not teach or suggest all of the above claimed elements of the claim. For example, Stafford does not disclose “a pressure applicator coupled to one of said first and second chambers,” nor does Stafford disclose that the pressure applicator is “operable to apply pressure to a cricoid cartilage of said patient.” Stafford is completely devoid of any discussion or suggestion of these limitations. Therefore, this rejection of independent claim 42 is not supported by Stafford and should be withdrawn.

Independent claim 49 was similarly rejected under 35 U.S.C. §102 over Stafford. This rejection is respectfully traversed. Claim 49 cites,

49. An endotracheal intubation assistance device placed under the head and shoulders of a patient in a supine position, the device comprising:
a first section;
a second section coupled to said first section;
a first platform supporting said first section;
a second platform supporting said second section;
said first platform being substantially raised and said second platform being substantially lowered to raise the patient's shoulder relative to the patient's head thereby facilitating insertion of a laryngoscope blade into the mouth of the patient;
said second platform being substantially raised and said first platform being substantially lowered to raise the patient's head relative to the patient's shoulders thereby facilitating visualization of the patient's glottis for insertion of an endotracheal tube; and
a pressure applicator coupled to one of said first and second platforms and operable to apply pressure to a cricoid cartilage of said patient.

Stafford does not teach or suggest all of the above claimed elements of the claim. For example, Stafford does not disclose “a pressure applicator coupled to one of said first and second platforms,” nor does Stafford disclose that the pressure applicator is “operable to apply pressure to a cricoid cartilage of said patient.” Stafford is completely devoid of any discussion or suggestion of these limitations. Therefore, this rejection of independent claim 49 is not supported by Stafford and should be withdrawn.

Rejections Under 35 U.S.C. §103

Claim 4 was rejected under 35 U.S.C. §103 over Stafford and Giori. This rejection is respectfully traversed. Claim 4 depends from claim 1 and adds the limitation that “at least one of said first and second chambers comprises a self expanding foam.” Giori discloses a mattress with a self-inflating foam core. There is no suggestion or motivation within these references to combine the “positioning system” of Stafford with fluid-inflatable bags and the foam mattress of Giori. In this context, the MPEP further provides at § 2143.01:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

In the above context, the courts have repeatedly held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination.

Even if it were proper to combine Stafford and Giori, the combination does not yield the limitations in claim 4. Claim 4 depends from independent claim 1 and it has been set forth above that Stafford, even in combination with Giori, does not disclose or show a pressure applicator. Accordingly, claim 4 is also allowable over Stafford and Giori and the rejection should be withdrawn.

Claim 5 was similarly rejected under 35 U.S.C. §103 over Stafford and Giori. This rejection is respectfully traversed. Claim 5 depends from claim 4 and adds the limitation that “said at least one of said first and second chambers comprising said self expanding foam being operable to couple to a suction device.” Giori discloses a mattress with a self-inflating foam core. There is no suggestion or motivation within these references to combine the “positioning system” of Stafford with fluid-inflatable bags and the foam mattress of Giori.

Even if it were proper to combine Stafford and Giori, the combination does not yield the limitations in claim 5. Claim 5 depends from claim 4 and independent claim 1 and it has been set forth above that Stafford, even in combination with Giori, does not disclose or show a pressure applicator. Accordingly, claim 5 is also allowable over Stafford and Giori and the rejection should be withdrawn.

Claim 6 was also rejected under 35 U.S.C. §103 over Stafford and Giori. This rejection is respectfully traversed. Claim 6 depends from claim 5 and adds the limitation that “said suction device being operable to remove air from said self expanding foam thereby causing said at least one chamber to deflate.” Giori discloses a mattress with a self-inflating foam core. There is no suggestion or motivation within these references to combine the “positioning system” of Stafford with fluid-inflatable bags and the foam mattress of Giori.

Even if it were proper to combine Stafford and Giori, the combination does not yield the limitations in claim 6. Claim 6 depends from claim 5 and independent claim 1 and it has been set forth above that Stafford, even in combination with Giori, does not disclose or show a pressure applicator. Accordingly, claim 6 is also allowable over Stafford and Giori and the rejection should be withdrawn.

Independent claim 52 was rejected under 35 U.S.C. §103 over Stafford, Starr and Moy. This rejection is respectfully traversed. Claim 52 cites,

52. A patient positioning assistance device placed under the head of a patient in a supine position during endotracheal intubation of the patient, the device comprising:

an inflatable chamber for placement under the head of the patient and being operable to adjust a tilt position of the head of the patient to facilitate insertion and proper placement of a laryngoscope blade into the mouth of the patient; and

a pressure applicator coupled to the chamber and operable to apply pressure to a cricoid cartilage of the patient in response to inflation of the chamber.

There is no suggestion or motivation within these references to combine the “positioning system” of Stafford with the “patient lifting device” of Starr and the “apparatus for measuring blood pressure” of Moy. As set forth above, the standard for combining references is very clear and that absent a motivation or suggestion, references cannot be combined to form the basis of rejection. As stated in the previous Amendment, Moy’s goal and function of measuring blood pressure is incongruent with the goal and function of Stafford’s and Starr’s devices. Moy’s pump-activated “inflatable cuff” is used to wrap around the patient’s arm “until the brachial arterial blood flow is arrested.” (Col. 5, lines 5-8). Neither Stafford nor Starr expressed any need or desire to use an “inflatable cuff” from Moy’s blood pressure measurement device to

arrest the patient's blood flow. Furthermore, neither Stafford nor Starr expressed any need or desire to use an "inflatable cuff" from Moy's blood pressure measurement device to apply pressure to the patient's cricoid cartilage. Moy is also completely devoid of any discussion of the desire to manipulate the patient's head and/or shoulders. Therefore, these references are improperly combined and this rejection should be withdrawn.

Even if it were proper to combine Stafford, Starr, and Moy, the resultant combination would yield an unsafe device that may result in cutting off blood and air circulation of the patient and leading to severe discomfort or even the death of the patient. Further, the combination does not yield the limitations in claim 52. Accordingly, independent claim 52 is also allowable over the art as combined and the rejection should be withdrawn.

Claims 10-12, 15-17, 19 and 20 were also rejected under 35 U.S.C. §103 over Stafford, Starr and Moy. This rejection is respectfully traversed. These claims depend from independent claim 1 and set forth additional limitations thereto.

Applicant submits that there is no suggestion or motivation to combine the "positioning system" of Stafford with the "patient lifting device" of Starr and the "apparatus for measuring blood pressure" of Moy as required by law. Neither Stafford nor Starr expressed any need or desire to use an "inflatable cuff" from Moy's blood pressure measurement device to arrest the patient's blood flow. Furthermore, neither Stafford nor Starr expressed any need or desire to use an "inflatable cuff" from Moy's blood pressure measurement device to apply pressure to the patient's cricoid cartilage. Moy is also completely devoid of any discussion of the desire or motivation to manipulate the patient's head and/or shoulders using Stafford or Starr's device. Therefore, these references are improperly combined and the rejections of claims 10-12, 15-17, 19 and 20 should be withdrawn.

Even if it were proper to combine Stafford, Starr, and Moy, the resultant combination would yield an unsafe device that may result in cutting off blood and air circulation of the patient and leading to severe discomfort or even the death of the patient. Further, the combination does not yield the limitations in the respective claims in view of independent claim 1. Accordingly, claims 10-12, 15-17, 19 and 20 are allowable over the art as combined and the rejection should be withdrawn.

The Examiner also rejected claim 44 over Stafford-Starr-Moy. This rejection is respectfully traversed. As discussed above, it is improper to combine these references. Even if the references were combined, the references still don't teach or suggest the claimed limitations. Accordingly, claim 44 is patentable.

The Examiner also rejected claim 51 over Stafford-Starr-Moy. This rejection is respectfully traversed. As discussed above, it is improper to combine these references and even if combined, the references still don't teach or suggest the claimed limitations. Accordingly, claim 51 is patentable.

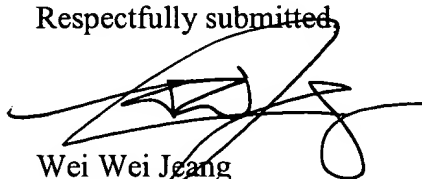
The Examiner's rejection of canceled claims 14, 18, 43, and 50 is noted. This rejection is improper because these claims are no longer pending in this application. Therefore, these rejections should be withdrawn.

The Examiner also cited Crangle on page 3 of the Official Action, but did not use Crangle to form the basis of any rejection. Applicant submits that there is no suggestion or motivation to combine the "positioning system" of Stafford with the "patient lifting device" of Starr, the "apparatus for measuring blood pressure" of Moy with Crangle's apparatus as required by law. Neither Stafford nor Starr expressed any need or desire to use an "inflatable cuff" from Moy's blood pressure measurement device to arrest the patient's blood flow. Neither Stafford nor Starr expressed any need or desire to use an "inflatable cuff" from Moy's blood pressure measurement device to apply pressure to the patient's cricoid cartilage. Neither Stafford nor Starr expressed the need or desire to apply Crangle's device to the patient's neck. Moy is also completely devoid of any discussion of the desire or motivation to manipulate the patient's head and/or shoulders using Stafford or Starr's device, or to use Crangle's device to apply pressure to the patient's arm. Even if combined, the resultant Stafford-Starr-Moy-Crangle combination would be an unsafe and unusable device.

Conclusion

It is clear from all of the foregoing that claims 1-13, 15-17, 19-42, 44-49, 51, and 52 are in condition for allowance. An early formal notice of allowance of the pending claims is respectfully requested.

Respectfully submitted,



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Dated: May 28, 2004

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on

May 28, 2004
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